

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1142

Citations Affected: IC 12-14-17; IC 12-15; IC 29-2-16.

Synopsis: Medicaid matters and organ procurement. Requires the division of family and children to pay funeral director and cemetery expenses incurred for an individual receiving or certified to receive certain public assistance. Provides that the division has a preferred claim against a decedent's estate that has sufficient assets to pay the funeral director and cemetery expenses. Increases the amount contributed from friends, relatives, and the decedent's estate that the division may not consider in determining the amount to be paid for the funeral director or cemetery expenses. Allows the state to use federal or state Medicaid funds to pay expenses for a Medicaid recipient or applicant who has assigned a life insurance policy that meets certain requirements to the state or made the state a beneficiary of the life insurance policy. Requires the office of Medicaid policy and planning to provide certain information to individuals before the assignment of a life insurance policy. Specifies the distribution of the remainder of the insurance proceeds after the state recoups the state's Medicaid expenses for the individual. Requires a coroner to attempt to facilitate permission for transplantation of organs, tissues, and eyes. Establishes procedures that a pathologist must follow if the pathologist considers withholding organs or tissues. Requires the procurement organization to provide reimbursement for the cost of organ removal if the pathologist is required to be present to examine the decedent. Provides that if a procurement organization has an agreement to perform anatomical gift services at a hospital the procurement organization is considered the donee for gifts from patients who die at the hospital. **(This conference committee report: (1) removes language that would have allowed the office of Medicaid policy and planning to pay life insurance premiums on the assignment of a life insurance policy and allows the office to pay certain expenses for the assignment of a life insurance policy only if there are no premiums due or remaining on the policy; and (2) adds language from SB 66 concerning organ procurement.)**

Effective: July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1142 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 Medicaid and health.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 12-14-17-2 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This section
- 7 applies upon the death of either of the following:
- 8 (1) A recipient who is receiving supplemental assistance.
- 9 (2) An aged, blind, or disabled person who at the time of death was
- 10 certified as eligible to receive medical assistance under Medicaid.
- 11 (b) ~~Unless otherwise determined by the director; Except as provided~~
- 12 **in subsection (c), the division shall pay six hundred dollars (\$600) for**
- 13 **the funeral director's expenses of the decedent if the following**
- 14 **conditions exist:**
- 15 (1) The estate of the deceased is insufficient to pay the funeral
- 16 director's expenses.
- 17 (2) The individual legally responsible for the burial of the deceased
- 18 is unable to pay the funeral director's expenses.
- 19 **(c) If the division determines that the estate of the deceased is**
- 20 **sufficient to pay all or part of the funeral director's expenses, the**
- 21 **division:**
- 22 **(1) shall pay six hundred dollars (\$600) for expenses that the**
- 23 **funeral director has incurred; and**

(2) may recover the amount paid by the division under this section as a preferred claim from the estate of the deceased.

SECTION 2. IC 12-14-17-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~Unless otherwise determined by the director;~~ **(a) Except as provided in subsection (b),** in addition to money paid by the division under section 2 of this chapter and even if the deceased or person legally responsible for the deceased possesses a burial lot, the division shall pay four hundred dollars (\$400) for the cemetery's expenses for the deceased to cover the following:

- (1) The provision of burial rights if necessary.
- (2) The opening and closing of a burial plot and provision of an outer container.
- (3) The service required by the cemetery authorities.

(b) If the division determines that the estate of the deceased is sufficient to pay all or part of the cemetery's expenses, the division:

(1) shall pay four hundred dollars (\$400) for expenses that the cemetery has incurred; and

(2) may recover the amount paid by the division under this section as a preferred claim from the estate of the deceased.

SECTION 3. IC 12-14-17-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. **Except for a claim for the costs and expenses of administration, a claim filed under sections 2(c) and 3(b) of this chapter is a superior claim.**

SECTION 4. IC 12-14-17-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. ~~An amount not exceeding~~ **The division:**

(1) may not consider a combined total of **one thousand seven hundred fifty dollars (\$1,750)** that is contributed by:

- ~~(1)~~ **(A)** friends;
- ~~(2)~~ **(B)** relatives; and
- ~~(3)~~ **(C)** the resources of the deceased; **and**

(2) may consider any amount that exceeds one thousand seven hundred fifty dollars (\$1,750) contributed by:

- (A) friends;**
- (B) relatives; and**
- (C) the resources of the deceased;**

~~may not be considered~~ when determining the amount to be paid to the funeral director for expenses under this chapter. However, the resources of the deceased may not be used if the deceased has prepaid funeral expenses that were excluded as a resource for Medicaid eligibility under IC 12-15-2.

SECTION 5. IC 12-14-17-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. ~~An amount not exceeding~~ **The division:**

(1) may not consider a combined total of ~~two~~ **four** hundred dollars ~~(\$200)~~ **(\$400)** that is contributed by:

- ~~(1)~~ **(A)** friends;
- ~~(2)~~ **(B)** relatives; and
- ~~(3)~~ **(C)** the resources of the deceased; **and**

(2) may consider any amount that exceeds four hundred dollars

1 **(\$400) contributed by:**

2 **(A) friends;**

3 **(B) relatives; and**

4 **(C) the resources of the deceased;**

5 ~~may not be considered~~ when determining the amount to be paid to the
6 cemetery for expenses under this chapter. However, the resources of the
7 deceased may not be used if the deceased has prepaid funeral expenses
8 that were excluded as a resource for Medicaid eligibility under
9 IC 12-15-2.

10 SECTION 6. IC 12-15-1-20 IS ADDED TO THE INDIANA CODE
11 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2005]: **Sec. 20. (a) To the extent allowed by federal law, the**
13 **office may use federal or state funds under the Medicaid program**
14 **to pay expenses related to a life insurance policy that:**

15 **(1) is owned by an applicant or a recipient;**

16 **(2) is paid and does not have any premiums due to be paid on**
17 **the policy; and**

18 **(3) either:**

19 **(A) is assigned to the state; or**

20 **(B) makes the state a beneficiary in an irrevocable election.**

21 **(b) The office shall inform an individual before the individual**
22 **makes an assignment or irrevocable election under this section that**
23 **the individual may have a life insurance policy described in**
24 **IC 12-15-2-17 that provides for the payment of the individual's**
25 **funeral expenses.**

26 SECTION 7. IC 12-15-2-17 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 17. (a)** Except as
28 provided in subsections (b) and (d), if an applicant for or a recipient of
29 Medicaid:

30 (1) establishes one (1) irrevocable trust that has a value of not more
31 than ten thousand dollars (\$10,000), exclusive of interest, and is
32 established for the sole purpose of providing money for the burial
33 of the applicant or recipient;

34 (2) enters into an irrevocable prepaid funeral agreement having a
35 value of not more than ten thousand dollars (\$10,000); or

36 (3) owns a life insurance policy with a face value of not more than
37 ten thousand dollars (\$10,000) and with respect to which provision
38 is made to pay not more than ten thousand dollars (\$10,000) toward
39 the applicant's or recipient's funeral expenses;

40 the value of the trust, prepaid funeral agreement, or life insurance
41 policy may not be considered as a resource in determining the
42 applicant's or recipient's eligibility for Medicaid.

43 (b) Subject to subsection (d), if an applicant for or a recipient of
44 Medicaid establishes an irrevocable trust or escrow under IC 30-2-13,
45 the entire value of the trust or escrow may not be considered as a
46 resource in determining the applicant's or recipient's eligibility for
47 Medicaid.

48 (c) **Except as provided under IC 12-15-3-7**, if an applicant for or a
49 recipient of Medicaid owns resources described in subsection (a) and
50 the total value of those resources is more than ten thousand dollars
51 (\$10,000), the value of those resources that is more than ten thousand

dollars (\$10,000) may be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid.

(d) In order for a trust, an escrow, a life insurance policy, or a prepaid funeral agreement to be exempt as a resource in determining an applicant's or a recipient's eligibility for Medicaid under this section, the applicant or recipient must designate the office or the applicant's or recipient's estate to receive any remaining amounts after delivery of all services and merchandise under the contract as reimbursement for Medicaid assistance provided to the applicant or recipient after fifty-five (55) years of age. The office may receive funds under this subsection only to the extent permitted by 42 U.S.C. 1396p. The computation of remaining amounts shall be made as of the date of delivery of services and merchandise under the contract and must be the excess, if any, derived from:

- (1) growth in principal;
- (2) accumulation and reinvestment of dividends;
- (3) accumulation and reinvestment of interest; and
- (4) accumulation and reinvestment of distributions;

on the applicant's or recipient's trust, escrow, life insurance policy, or prepaid funeral agreement over and above the seller's current retail price of all services, merchandise, and cash advance items set forth in the applicant's or recipient's contract.

SECTION 8. IC 12-15-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Except as provided in subsection (b) **and section 7 of this chapter**, an applicant for or recipient of Medicaid is ineligible for assistance if the total cash value of money, stock, bonds, and life insurance owned by:

- (1) the applicant or recipient is more than one thousand five hundred dollars (\$1,500) for assistance to the aged, blind, or disabled; or
- (2) the applicant or recipient and the applicant's or recipient's spouse is more than two thousand two hundred fifty dollars (\$2,250) for medical assistance to the aged, blind, or disabled.

(b) In the case of an applicant who is an eligible individual, a Holocaust victim's settlement payment received by the applicant or the applicant's spouse may not be considered when calculating the total cash value of money, stock, bonds, and life insurance owned by the applicant or the applicant's spouse.

SECTION 9. IC 12-15-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) **Except as provided in section 7 of this chapter**, if the parent of an applicant for or a recipient of assistance to the blind or disabled who is less than eighteen (18) years of age owns money, stock, bonds, and life insurance whose total cash value is more than one thousand five hundred dollars (\$1,500), the amount of the excess shall be added to the total cash value of money, stock, bonds, and life insurance owned by the applicant or recipient to determine the recipient's eligibility for Medicaid under section 1 of this chapter.

(b) However, a Holocaust victim's settlement payment received by the parent of an applicant for or a recipient of assistance may not be added to the total cash value of money, stock, bonds, and life insurance

owned by the applicant or recipient to determine the recipient's eligibility for Medicaid under section 1 of this chapter.

SECTION 10. IC 12-15-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **Except as provided in section 7 of this chapter**, if the parents of an applicant for or a recipient of assistance to the blind or disabled who is less than eighteen (18) years of age own money, stock, bonds, and life insurance whose total cash value is more than two thousand two hundred fifty dollars (\$2,250), the amount of the excess shall be added to the total cash value of money, stock, bonds, and life insurance owned by the applicant or recipient to determine the recipient's eligibility for Medicaid under section 1 of this chapter.

SECTION 11. IC 12-15-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. **Except as provided in section 7 of this chapter**, the office may set the total cash value of money, stock, bonds, and life insurance that an applicant for or a recipient of Medicaid may own without being ineligible for Medicaid in cases not described in section 1 of this chapter.

SECTION 12. IC 12-15-3-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. **(a) The total value of a life insurance policy owned by an applicant or a recipient may not be considered as a resource in determining the applicant's or recipient's eligibility for Medicaid if no more premiums are due on the policy and the applicant or recipient:**

- (1) makes an irrevocable election to name the state as the beneficiary of the life insurance policy; or**
- (2) assigns the insurance policy to the state.**

(b) The state has an insurable interest in an applicant or a recipient who assigns a life insurance policy to the state or names the state as beneficiary of the life insurance policy under this section.

(c) After the state:

- (1) receives payment from a life insurance policy described in subsection (a); and**
- (2) recoups the state's expenses of providing services under the Medicaid program for the individual;**

the remainder of the amount of the policy reverts to the secondary beneficiary of the life insurance policy or, if there is not a secondary beneficiary, to the individual's estate.

SECTION 13. IC 29-2-16-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Except where the context clearly indicates a different meaning, the terms used in this chapter shall be construed as follows:

(a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of ~~his~~ **the decedent's** body.

(d) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state. **The term** includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids, and any other portions of a human body.

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "Procurement organization" means an organization qualified to recover anatomical gifts from donors.

~~(h)~~ (i) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

SECTION 14. IC 29-2-16-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; ~~or~~

(2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; ~~or~~

(3) any ~~bank~~ **procurement organization** or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) any specified individual for therapy or transplantation needed by ~~him~~ **the individual**.

SECTION 15. IC 29-2-16-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. (a) A coroner ~~may release and permit shall attempt to facilitate permission for~~ the removal of ~~a part from a body~~ **organs, tissues, or eyes** within the coroner's custody, for transplantation, ~~or therapy, only, or research by~~ **providing information to or seeking information from the procurement organization that would assist the procurement organization in the evaluation of the viability for transplantation of any organ, tissue, or eye** if all of the following occur:

(1) The coroner receives a request ~~for a part~~ from a hospital, physician, surgeon, or procurement organization.

(2) The coroner makes a reasonable effort, taking into account the useful life of a part, to locate and examine the decedent's medical records and inform individuals listed in section 2(b) of this chapter of their option to make or object to making a gift under this chapter.

(3) The decision to allow the removal of organs, tissues, or eyes is based on a medical decision made by the pathologist or forensic pathologist. If the pathologist or forensic pathologist considers withholding one (1) or more organs or tissues of a

potential donor, the pathologist or forensic pathologist:

(A) shall be present during the removal of the organs or tissues;

(B) may request a biopsy of the removed organs; and

(C) after viewing the removed organs or tissues and determining that removal may interfere with the death investigation, may prohibit removal and shall provide a written explanation to the procurement organization.

If it is determined that prior removal will interfere with the death investigation, the procurement organization may remove the tissues and eyes after the autopsy.

~~(3)~~ (4) The coroner does not know of a refusal or contrary indication by the decedent or an objection by an individual having priority to act as listed in section 2(b) of this chapter.

~~(4)~~ (5) The removal will be by:

(A) a physician licensed under IC 25-22.5; or

(B) in the case of removal of an eye or part of an eye, by an individual described in section 4(e) of this chapter; and under IC 36-2-14-19.

~~(5)~~ (6) The removal will not interfere with any autopsy or investigation.

~~(6)~~ (7) The removal will be in accordance with accepted medical standards.

~~(7)~~ (8) Cosmetic restoration will be done, if appropriate.

(9) If the pathologist or forensic pathologist is required to be present to examine the decedent before or during the removal of the parts, the procurement organization shall reimburse the pathologist or forensic pathologist for actual costs, but the amount may not exceed one thousand dollars (\$1,000). The county is not responsible for any costs incurred by the pathologist, forensic pathologist, or procurement organization under this subdivision.

(10) If requested by the coroner, pathologist, or forensic pathologist, the procurement organization shall provide a surgeon's report detailing the condition of the organs and the relationship of the organs to the cause of death, if any.

(b) If the body is not within the custody of the coroner, the ~~medical examiner~~ pathologist or forensic pathologist may release and permit the removal of any part from a body in the ~~medical examiner's~~ custody for transplantation or therapy if the requirements of subsection (a) are met.

(c) A person under this section who releases or permits the removal of a part shall maintain a permanent record of the name of the decedent, the individual making the request, the date and purpose of the request, the body part requested, and the person to whom it was released.

SECTION 16. IC 29-2-16-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6.5. (a) Except for a gift made by a donor to a specific donee, a procurement organization that holds an agreement with a hospital to perform anatomical gift donation services for the hospital under 42 U.S.C. 1329b-8 and 42 CFR Part

1 **482 is considered to be the donee of all gifts from patients who have**
2 **died in the hospital.**

3 **(b) An investigation by a coroner or a medical examiner does not**
4 **change the rights of a procurement organization to act as the**
5 **donee.**

(Reference is to EHB 1142 as printed April 1, 2005.)

Conference Committee Report
on
Engrossed House Bill 1142

Signed by:

Representative Brown T
Chairperson

Senator Kenley

Representative Fry

Senator Simpson

House Conferees

Senate Conferees